

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DR. SHIVA AYYADURAI,

Plaintiff,

v.

WILLIAM FRANCIS GALVIN, in his official capacity as the Secretary of the Commonwealth of Massachusetts and his individual capacity, MICHELLE TASSINARI, in her individual capacity, DEBRA O'MALLEY, in her individual capacity, AMY COHEN, in her individual capacity, and NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS

Defendant.

CIVIL ACTION  
NO. 1:20-cv-11889-MLW

**SUPPLEMENTAL RESPONSE TO AUGUST 5, 2021 ORDER AND AUGUST 6, 2021 ORDER ABOUT DOCUMENTS REQUESTED BY DEFENDANTS CONCERNING AUTHORSHIP OF PLAINTIFF'S MEMORANDUM OF LAW (DOCKET NO. 166) AND MOTION TO COMPEL**

Pursuant to the Court's August 5, 2021 order (Docket No. 184), the Commonwealth Defendants filed a list of documents concerning Plaintiff's alleged creation of the Memorandum of Law (Docket No. 166) that had been requested from Plaintiff. Prior to filing this list, and pursuant to the Court's order, Defendants conferred with Plaintiff and requested the voluntary production of these documents, but Plaintiff refused to do so. Defendants set forth the basis for why these documents should be produced on the record during the August 4, 2021 hearing, namely that the most direct and reliable way to resolve the question of who participated in the creation of Plaintiff's memorandum of law was for Plaintiff and his agents to produce these documents in a forensically secure, electronic medium with all metadata intact and preserved.

Such information, particularly emails between and among Plaintiff and his counsel from Todd & Weld LLP, Cornell Dolan, P.C., and Harder LLP, are directly relevant and would assist the Court and the parties in resolving the authorship question. Nothing precludes production of those documents where Plaintiff has waived the attorney-client privilege by testifying about his communications with counsel in both the ex parte and open sessions of this Court's hearing on August 4, 2021. To the extent that the Court's order of August 6, 2021 contemplates that Defendants' August 5, 2021 filing (Docket No. 186) should have been made as a motion to compel, Defendants now supplement the record to clarify that Plaintiff should be compelled to produce the following electronic documents (along with accompanying metadata):

1. All correspondence between Plaintiff and his attorneys at Todd & Weld concerning what claims to assert in a revised second amended complaint;
2. All correspondence between Plaintiff and Todd & Weld concerning the termination of Todd & Weld by Plaintiff;
3. All correspondence between Plaintiff and Todd & Weld concerning the memorandum of law, including all drafts of the memorandum of law, as well as the revised second amended complaint;
4. All correspondence between Plaintiff (or his other counsel) and Harder LLP, including Dilan Esper, Esq., concerning this case;
5. All correspondence between Plaintiff and Cornell Dolan, P.C., including Timothy Cornell, Esq., concerning the revised second amended complaint and the memorandum of law, including correspondence concerning who would author those documents; and
6. All electronic documents relating to what would be filed as the memorandum of law, including all earlier drafts.

In addition, Defendants request that the Court unseal the following, again on the basis of their argument during the August 4, 2021 hearing:

7. All filings with the Court that were made ex parte and under seal; and
8. All portions of transcript of August 4, 2021 that were ex parte and under seal.

Should the Court wish for additional briefing in support of this motion that expounds upon the reasons articulated on the record at the August 4, 2021 hearing, Defendants would be pleased to provide such additional briefing in support of this request.

Defendants also continue to respectfully submit that the Court refer the discovery associated with this issue, including the production of document and the taking of testimony under oath of material witnesses, including Plaintiff and his counsel or agents, either by deposition or in open court, to a magistrate judge pursuant to Fed. R. Civ. P. 72(a). Moreover, Defendants reiterate their request that the magistrate judge be empowered to make all necessary fact findings and prepare a report and recommendations for this Court's consideration concerning the creation of the memorandum of law. Defendants believe that such a referral will permit the efficient resolution of this issue and will also allow the Court to focus on the new complaint that Plaintiff has been ordered to file and all dispositive motions made relating to this new complaint before the three-day hearing at the end of August.

Respectfully submitted,

Defendants,

WILLIAM FRANCIS GALVIN, in his official and individual capacities, MICHELLE TASSINARI, in her individual capacity, and DEBRA O'MALLEY, in her individual capacity,

By their attorneys,

MAURA HEALEY  
ATTORNEY GENERAL

/s/ Adam Hornstine

Anne Sterman (BBO No. 650426)  
Adam Hornstine (BBO# 666296)  
Assistant Attorneys General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617-963-2048  
[Anne.Sterman@mass.gov](mailto:Anne.Sterman@mass.gov)  
[Adam.Hornstine@mass.gov](mailto:Adam.Hornstine@mass.gov)

Date: August 6, 2021

**LOCAL RULE 7.1 CERTIFICATION**

I, Adam Hornstine, Assistant Attorney General, hereby certify that on August 4-5, 2021, I met and conferred with Plaintiff's counsel in an attempt to resolve or narrow the issues presented by this request for documents but was unable to do so.

/s/ Adam Hornstine  
Adam Hornstine

**CERTIFICATE OF SERVICE**

I, Adam Hornstine, Assistant Attorney General, hereby certify that I have this day, August 6, 2021, served the foregoing **document**, upon all parties, by electronically filing to all ECF registered parties.

/s/ Adam Hornstine  
Adam Hornstine